



April 3, 2009

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## ENGROSSED SENATE BILL No. 225

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DIGEST OF SB 225 (Updated March 31, 2009 3:55 pm - DI 107)

**Citations Affected:** IC 32-31.

**Synopsis:** Foreclosure and tenants. Provides that a plaintiff who obtains a judgment of foreclosure on real property: (1) shall honor the terms of a residential rental agreement of; and (2) unless there is cause, may not evict for 90 days; a tenant who rents a rental unit in the property. Requires the landlord of a residential real property containing a rental unit to notify tenants if the property is the subject of a foreclosure action. Permits a tenant to terminate a rental agreement in certain circumstances. Authorizes a tenant to bring a civil action against an owner or landlord in certain circumstances. Provides that for 1 year after the date on which a judgment of foreclosure is rendered on real property containing residential rental units, a tenant may not be evicted from a rental unit unless: (1) the landlord or owner sends the tenant a notice of eviction at least 30 days before the date of eviction; or (2) the rental agreement has expired.

**Effective:** July 1, 2009.

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**Lubbers, Lawson C, Broden,  
Randolph, Breaux, Merritt**

(HOUSE SPONSORS — DAY, FOLEY)

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January 7, 2009, read first time and referred to Committee on Judiciary.  
January 22, 2009, amended, reported favorably — Do Pass.  
January 26, 2009, read second time, ordered engrossed. Engrossed.  
January 27, 2009, read third time, passed. Yeas 48, nays 2.

HOUSE ACTION

February 25, 2009, read first time and referred to Committee on Judiciary.  
April 2, 2009, amended, reported — Do Pass.

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ES 225—LS 7084/DI 106+



April 3, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 225

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A BILL FOR AN ACT to amend the Indiana Code concerning property.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 32-31-3-13 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A security deposit  
3 may be used only for the following purposes:

4 (1) To reimburse the landlord for actual damages to the rental unit  
5 or any ancillary facility that are not the result of ordinary wear and  
6 tear.

7 (2) To pay the landlord for:

8 (A) all rent in arrearage under the rental agreement; and

9 (B) rent due for premature termination of the rental agreement  
10 by the tenant. **However, this clause does not apply to a**  
11 **rental agreement terminated in accordance with**  
12 **IC 32-31-8-7.**

13 (3) To pay for the last payment period of a residential rental  
14 agreement if a written agreement between the landlord and the  
15 tenant stipulates that the security deposit will serve as the last  
16 payment of rent due. **However, if a rental agreement is**  
17 **terminated in accordance with IC 32-31-8-7, this subdivision**

ES 225—LS 7084/DI 106+



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**applies only to the prorated rent due, if any.**

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

SECTION 2. IC 32-31-8-1, AS AMENDED BY P.L.62-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in **section 7 of this chapter or in** subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008.

SECTION 3. IC 32-31-8-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) **This section applies to rental agreements entered into, extended, or renewed after June 30, 2009.**

(b) **This section applies to real property containing one (1) or more rental units that is the subject of a mortgage foreclosure action under IC 32-30-10. However, this section does not apply if a receiver is appointed in the foreclosure action under IC 32-30-5.**

(c) A plaintiff that obtains a judgement of foreclosure under IC 32-30-10 with respect to a certain property and any subsequent owners of the property:

(1) shall honor the terms of a residential rental agreement of; and

(2) unless there is cause, may not evict for ninety (90) days; a tenant who rents a rental unit located in the property that was the subject of the mortgage foreclosure action.

(d) Not later than ten (10) days after a foreclosure complaint is filed with respect to real property described in subsection (b), the landlord shall by mail or personal delivery provide each tenant with a written notice that:

(1) states that the real property is the subject of a foreclosure action; and

(2) sets forth the rights of tenants under this section.

(e) If a landlord:

(1) fails to provide the notice described in subsection (d); and

(2) fails to fulfill any of the duties set forth in IC 32-31-8-5(1), IC 32-31-8-5(2), and IC 32-31-8-5(4);

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the tenant has the right to terminate the rental agreement upon written notice delivered to the landlord or owner. Termination of a rental agreement under this subsection is effective on a date established by the tenant, but not earlier than ten (10) days after the tenant receives the written notice described in subsection (d).

(f) A tenant who terminates a rental agreement under this section is liable for all rent and other charges due under the rental agreement to the effective date of termination, in an amount that is prorated to the effective date of termination. Rent due under this subsection is payable at the time it would have been payable under the terms of the rental agreement being terminated.

(g) Except for the rent and other charges payable as described in subsection (f), a tenant who terminates a rental agreement under this section is not liable for any other rent or charges solely because of the early termination of the rental agreement. However, a tenant may be liable for other charges if the tenant causes damage to the rental premises.

(h) A tenant who terminates a rental agreement under this section is entitled to the return of the tenant's security deposit unless the security deposit is used for the purposes set forth in IC 32-31-3-13.

(i) A tenant may bring an action in any court having jurisdiction to enforce an obligation of an owner or a landlord under this section, or to obtain a remedy for the owner's noncompliance. If the tenant prevails in an action brought under this section, the tenant may recover:

- (1) actual and consequential damages;
- (2) reasonable attorney's fees and court costs; and
- (3) reasonable relocation expenses.

(j) A waiver of this chapter by a landlord or current or former tenant, by contract or otherwise, is void.

SECTION 4. IC 32-31-8-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section applies to real property that contains one (1) or more residential rental units and that is the subject of a judgment of foreclosure rendered under IC 32-30-10.

(b) This section does not apply:

- (1) for an emergency possessory order issued under IC 32-31-6; or
- (2) when a tenant has failed to pay rent or comply with other obligations of the rental contract or agreement.

(c) For one (1) year after the date on which a judgment of

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- 1 foreclosure is rendered under IC 32-30-10, a tenant may not be  
2 evicted from the tenant's rental unit unless:  
3 (1) the landlord or owner sends the tenant a notice of eviction  
4 at least thirty (30) days before the date of eviction; or  
5 (2) the rental agreement has expired.  
6 (d) In seeking an order from a court to evict a tenant of a  
7 property described in subsection (a), a landlord or owner must  
8 provide a copy of the notice described in subsection (c).

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 225, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-29-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) This section applies to real estate that is the subject of a judgment of foreclosure under IC 32-30-10-5 if all or part of the real estate is leased or rented. However, this section does not apply:**

- (1) to a rental agreement for dwelling units located in Indiana;**
- (2) if the tenant or lessee is named as a defendant in the foreclosure action;**
- (3) if the real estate is leased for a period of more than three (3) years; or**
- (4) if a receiver is appointed under IC 32-30-5.**

**(b) This section applies to rental or lease agreements entered into, extended, or renewed after June 30, 2009.**

**(c) Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (a) is entered, the owner of the real property shall provide each tenant or lessee with written notice of:**

- (1) the judgment of foreclosure; and**
- (2) the rights of the tenant or lessee under this section;**

**by registered or certified mail.**

**(d) A tenant or lessee of real property described in subsection (a) has the right to terminate the rental or lease agreement upon written notice delivered to the landlord or owner. Termination of a rental or lease agreement under this subsection is effective on a date established by the tenant or lessee, but not earlier than:**

- (1) ten (10) days after the tenant or lessee receives the written notice described in subsection (c); or**
- (2) ten (10) days after the date the judgment of foreclosure is entered, if the tenant or lessee does not timely receive the written notice described in subsection (c).**

**(e) A tenant or lessee who terminates a rental or lease agreement under this section is liable for all rent and other charges due under the rental or lease agreement to the effective date of**

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termination, in an amount that is prorated to the effective date of termination. Rent due under this subsection is payable at the time it would have been payable under the terms of the rental or lease agreement being terminated.

(f) Except for the rent and other charges payable as described in subsection (e), a tenant who terminates a rental or lease agreement under this section is not liable for any other rent or charges solely because of the early termination of the rental or lease agreement. However, a tenant or lessee may be liable for other charges if the tenant or lessee causes damage to the rental premises.

(g) A tenant or lessee may bring an action in any court having jurisdiction to enforce an obligation of an owner or a landlord under this section, or to obtain a remedy for the owner's noncompliance. If the tenant or lessee prevails in an action brought under this section, the tenant or lessee may recover:

- (1) actual and consequential damages;
- (2) reasonable attorney's fees and court costs; and
- (3) reasonable relocation expenses.

(h) A waiver of this chapter by a landlord or current or former tenant or lessee, by contract or otherwise, is void."

Page 2, line 19, after "into" insert ", extended,".

Page 2, line 22, after "IC 32-30-10-5." insert "**However, this section does not apply if a receiver is appointed in the foreclosure action under IC 32-30-5.**".

Page 3, line 7, after "agreement." insert "**However, a tenant may be liable for other charges if the tenant causes damage to the rental premises.**".

Page 3, delete lines 18 through 42.

Delete page 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 225 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 225, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 39.

Page 3, line 35, delete "judgment of" and insert "**mortgage**".

Page 3, line 35, after "foreclosure" insert "**action**".

Page 3, line 36, delete "32-30-10-5." and insert "**32-30-10**".

Page 3, line 38, delete "Not later than ten (10) days after the judgment of foreclosure" and insert "**A plaintiff that obtains a judgement of foreclosure under IC 32-30-10 with respect to a certain property and any subsequent owners of the property:**

(1) shall honor the terms of a residential rental agreement of;  
and

(2) unless there is cause, may not evict for ninety (90) days;  
a tenant who rents a rental unit located in the property that was the subject of the mortgage foreclosure action.

(d) Not later than ten (10) days after a foreclosure complaint is filed with respect to real property described in subsection (b), the landlord shall by mail or personal delivery provide each tenant with a written notice that:

(1) states that the real property is the subject of a foreclosure action; and

(2) sets forth the rights of tenants under this section.

(e) If a landlord:

(1) fails to provide the notice described in subsection (d); and

(2) fails to fulfill any of the duties set forth in IC 32-31-8-5(1), IC 32-31-8-5(2), and IC 32-31-8-5(4);

**the tenant has the right to terminate the rental agreement upon written notice delivered to the landlord or owner. Termination of a rental agreement under this subsection is effective on a date established by the tenant, but not earlier than ten (10) days after the tenant receives the written notice described in subsection (d).**"

Page 3, delete lines 39 through 42.

Page 4, delete lines 1 through 12.

Page 4, line 13, delete "(e)" and insert "**(f)**".

Page 4, line 19, delete "(f)" and insert "**(g)**".

Page 4, line 20, delete "(e)," and insert "**(f)**".

Page 4, line 25, delete "(g)" and insert "**(h) A tenant who terminates a rental agreement under this section is entitled to the**

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**return of the tenant's security deposit unless the security deposit is used for the purposes set forth in IC 32-31-3-13.**

**(i)".**

Page 4, line 33, delete "(h)" and insert "(j)".

Page 4, after line 34, begin a new paragraph and insert:

"SECTION 3. IC 32-31-8-8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) This section applies to real property that contains one (1) or more residential rental units and that is the subject of a judgment of foreclosure rendered under IC 32-30-10.**

**(b) This section does not apply:**

**(1) for an emergency possessory order issued under IC 32-31-6; or**

**(2) when a tenant has failed to pay rent or comply with other obligations of the rental contract or agreement.**

**(c) For one (1) year after the date on which a judgment of foreclosure is rendered under IC 32-30-10, a tenant may not be evicted from the tenant's rental unit unless:**

**(1) the landlord or owner sends the tenant a notice of eviction at least thirty (30) days before the date of eviction; or**

**(2) the rental agreement has expired.**

**(d) In seeking an order from a court to evict a tenant of a property described in subsection (a), a landlord or owner must provide a copy of the notice described in subsection (c)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 225 as printed January 23, 2009.)

LAWSON L, Chair

Committee Vote: yeas 5, nays 3.

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